

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1801 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

SONI MANILAL JAGJIVANDAS

Versus

MULIBEN DHANJIBHAI

Appearance:

MR PM THAKKAR for Petitioner

MR SURESH M SHAH for Respondent No. 1

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 10/02/2000

ORAL JUDGEMENT

#. Present Civil Revision Application has been filed by the original defendant against the respondent plaintiff who had filed a suit being Civil Suit No.640 of 1979 (Old Civil Suit No.1141 of 1978) in the court of learned Additional Judge, Small Causes Court, Rajkot. Aforesaid suit was filed by the respondent landlady on the ground

that she is the owner of the suit property known as 'Krishnakunj' situated in the city of Rajkot. The portion of the suit property consisting of one room and kitchen was let out to the defendant at a monthly rent of Rs. 7/-. That the defendant was irregular in payment of rent. That an amount of Rs.1232/- was due from 1.12.63 to 31.7.78. That a demand notice was served upon the defendant but he did not deposit any amount of rent inspite of the same. Therefore, a suit was filed for getting possession of the premises on the ground of arrears of rent. The plaintiff had also prayed for eviction of the tenant on the ground of acquiring alternative accommodation as well as on the ground of non user of the premises by the tenant.

#. The defendant resisted the suit on various grounds. It was the say of the defendant that the plaintiff was not accepting the rent and that he was ready and willing to pay the rent. Other grounds like acquisition of suitable residence and non user of the suit premises were also denied by the defendant.

#. The learned Trial Judge framed various issues at exh.1 and after hearing both the sides, the learned Trial Judge by his judgment and order dated 20.4.1981 decreed the suit of the plaintiff for possession on the ground of arrears of rent as well as on the ground of non user of the suit premises. Said decree of the learned Trial Judge was challenged by the defendant-tenant by preferring an appeal before the learned Extra Assistant Judge, Rajkot being Civil Appeal No.101 of 1981. The learned Appellate Judge after hearing the parties ultimately dismissed the appeal by his judgment and order dated 9.9.1983. The learned Appellate Judge confirmed the decree of the Trial Court on the ground of arrears of rent as well as on the ground of non user of the suit premises.

#. The petitioner tenant has challenged the said decree of the appellate court by filing present revision application.

#. I have heard the learned advocate for the parties.

#. It is the specific case of the plaintiff that the defendant has not paid the rent from 1.12.1963 to 31.7.78 and the defendant was served with a demand notice. The defendant has not denied that the rent is due from 1.12.63. But his case was that he had sent the amount of rent by Money Order but the landlady had not accepted the same. It was the say of the defendant-tenant that he was

ready and willing to pay the rent. In his evidence the defendant has stated that after the suit notice he met the plaintiff with the amount of rent but she refused to accept the same. It is pertinent to note that the defendant after having received the suit notice has failed to pay up the arrears of rent as demanded in the notice. He has not even replied to the suit notice nor has tendered the amount due. The learned Appellate Judge has not found the story of the defendant to be correct that he had personally went to pay the money to the landlady. The learned Appellate Judge has also observed in the judgment that after sending the Money Orders at exhs. 48 to 52, the defendant sat silent till the suit notice exh.38 was given and even after receiving the suit notice he failed to tender the amount of rent. In that view of the matter, the decree for possession which has been passed by the learned Trial Trial Judge on the ground of arrears of rent was confirmed by the learned Appellate Judge.

#. The learned Appellate Judge has relied upon the judgment of this court in the case of Bhalchandra N.Vakil vs. Chandulal Mohanlal Darji 20 (GLT) page 28. It has been found by this court that where the tenant does not offer to pay the arrears after receiving the notice from the landlord, specifically⁸ calling upon him to pay the same only on the ground that prior to the receiving the notice he had remitted the rent due which was refused by the landlord, in such case it cannot be said that the tenant was ready and willing to pay the rent due. In view of the aforesaid decision the courts below have rightly decreed the suit for possession on the ground of arrears of rent.

#. In view of the aforesaid circumstances, present case would fall under section 12(3)(a) of the Bombay Rent Act. The defendant tenant has not produced any receipt to show that he has deposited the arrears of rent within one month of the receipt of the suit notice. Thus as per the decision reported in 31(1) GLR page 209, present Revision Application deserves to be dismissed. Accordingly present Revision Application is dismissed. Rule discharged. Interim relief granted earlier stands vacated forthwith. No order as to costs.

The defendant-is directed to pay mesne profit at the rate of Rs.7/- per month to the landlady.

#. At this stage the learned advocate for the petitioner requested the court to grant some time for vacating the suit premises. In the facts and circumstances of the

case the decree for possession be not executed for a period of six months from today. Aforesaid time is granted on condition that the petitioner shall file an undertaking before this court within four weeks from today . In the said undertaking it should be clearly mentioned that he will not sell,transfer or alienate the suit property to any one in any manner whatsoever and he will hand over vacant and peaceful possession of the suit premises to the respondent landlady on or before 31.8.2000. If the aforesaid undertaking is not filed within the stipulated time or if any breach is committed of the said undertaking, it will be open for the respondent landlady to execute the decree for possession forthwith without waiting for the aforesaid period of six months.

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